

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO.243 OF 2005
IN
COMPANY PETITION NO.412 OF 1985

In the matter of Madhavnagar
Cotton Mills Ltd. (In Liqn.)

Shri.Jagdish Kedarnath Tiwari ...Applicant

Versus

The Official Liquidator & Ors. ...Respondents

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Mr.A.C.Singh i/b Mr.D.R.Shah for Applicant.

Ms.Gautam, Dy.Official Liquidator is present.

Mr.T.S.Ingale with Mr.S.S.Jinsiwale for
Respondent No.4.

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CORAM: A.M.KHANWILKAR, J.
SEPTEMBER 2, 2005.

P.C .

1. Heard Counsel for the parties.
2. By this Application, the Applicant/third

party prays that the sale confirmed in favour of M/s.Budhgaon Bleachers Dyers & Processors Pvt.Ltd./Respondent No.4 in respect of Gat No.115, H.No.708, S.No.203(4), Tasgaon Road, Madhavnagar, Sangli, by order dated 22nd August 2003 be set aside.

3. The sole basis on which the Applicant has approached this Court is that the sale confirmed in favour of the above named Respondent No.4 is not in accord with the earlier orders passed by this Court. My attention has been invited to order dated 14th March 2002 passed by Justice D.K.Deshmukh, which required the Official Liquidator to invite valuation report regarding the prevailing rate of the properties from the Sub-Registrar, Sangli. However, the sale in favour of Respondent No.4 has been confirmed by this Court on 22nd August 2003 on the basis of valuation report invited from private valuer.

4. In other words, the only argument that requires to be considered is: whether the sale confirmed on 22nd August 2003 can be said to be

appropriate? I have no difficulty in accepting the argument of the Applicant that if the earlier order passed was for inviting valuation report from Sub-Registrar, Sangli, the sale could not have proceeded on the basis of valuation report received from a private valuer. On this count alone, the Application should succeed.

5. Counsel for the Respondent no.4, however, contends that the valuation report submitted by the private valuer was just and proper as it had taken into account the fact that Respondent No.4 was occupying the property on lease. This position was canvassed by the Respondent No.4 before Justice S.Radhakrishnan, as can be discerned from order dated 10th February 2004.

6. The argument seems to be attractive. However, it overlooks that after the order dated 10th February 2004 passed on the present Application by Justice S.Radhakrishnan, report was invited from the Sub-Registrar, Sangli, who in turn, has submitted that report on 26th March 2004, which states that the fair market value of the

property is around Rs.17,05,000/- (Rupees Seventeen Lakhs Five Thousand). Going by the report, the sale which has been confirmed in favour of the Respondent No.4 is obviously under valued, which was, as mentioned earlier, on the basis of private valuer's report. Applicant, on the other hand, has made offer before this Court to purchase the property on 'As is where and whatever there is' basis as mentioned in the terms and conditions of sale, which were advertised on the earlier occasion by offering consideration in the sum of Rs.20,00,000/- (Rupees Twenty Lakhs). As there is vast difference between the offer made by the Applicant and the sale confirmed in favour of the Respondent No.4 in respect of the above described property, I have no hesitation in setting aside the sale confirmed under order dated 22nd August 2003 in favour of the Respondent No.4.

7. The Official Liquidator is directed to issue fresh advertisement, providing for same terms and conditions of sale as mentioned in the earlier advertisement and take further steps for inviting offer and seek direction from this Court for

confirmation of the sale.

8. The Applicant is personally present in Court and has himself assured through his Counsel that he will participate in the bidding and give the minimum offer of Rs.20,00,000/- (Rupees Twenty Lakhs) in respect of the above said property, which assurance is accepted.

9. Counsel for the Applicant, however, prays that this Court may clarify that the Respondent No.4 has no interest in the property, as that aspect has been answered against the Respondent No.4 in some derivative proceedings. That is not the scope of present proceedings. I have not examined that case put forth by the Applicant or the explanation offered by the Respondent No.4 with regard to the right, title and interest of the Respondent No.4 in the above said property, as those aspects do not arise for my consideration.

10. Application disposed of on the above terms.

11. The Official Liquidator shall take steps to conclude the sale at the earliest, not later than four weeks from today.

12. The question of apportionment of amount already deposited by the Respondent No.4 after confirmation of sale, will be considered at the appropriate stage.

A.M.KHANWILKAR, J.